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IN THE
Supreme Court of the United States
OCTOBER TERM, 1942

No. **1037** 96

V. W. PETTY *Petitioner*

v.

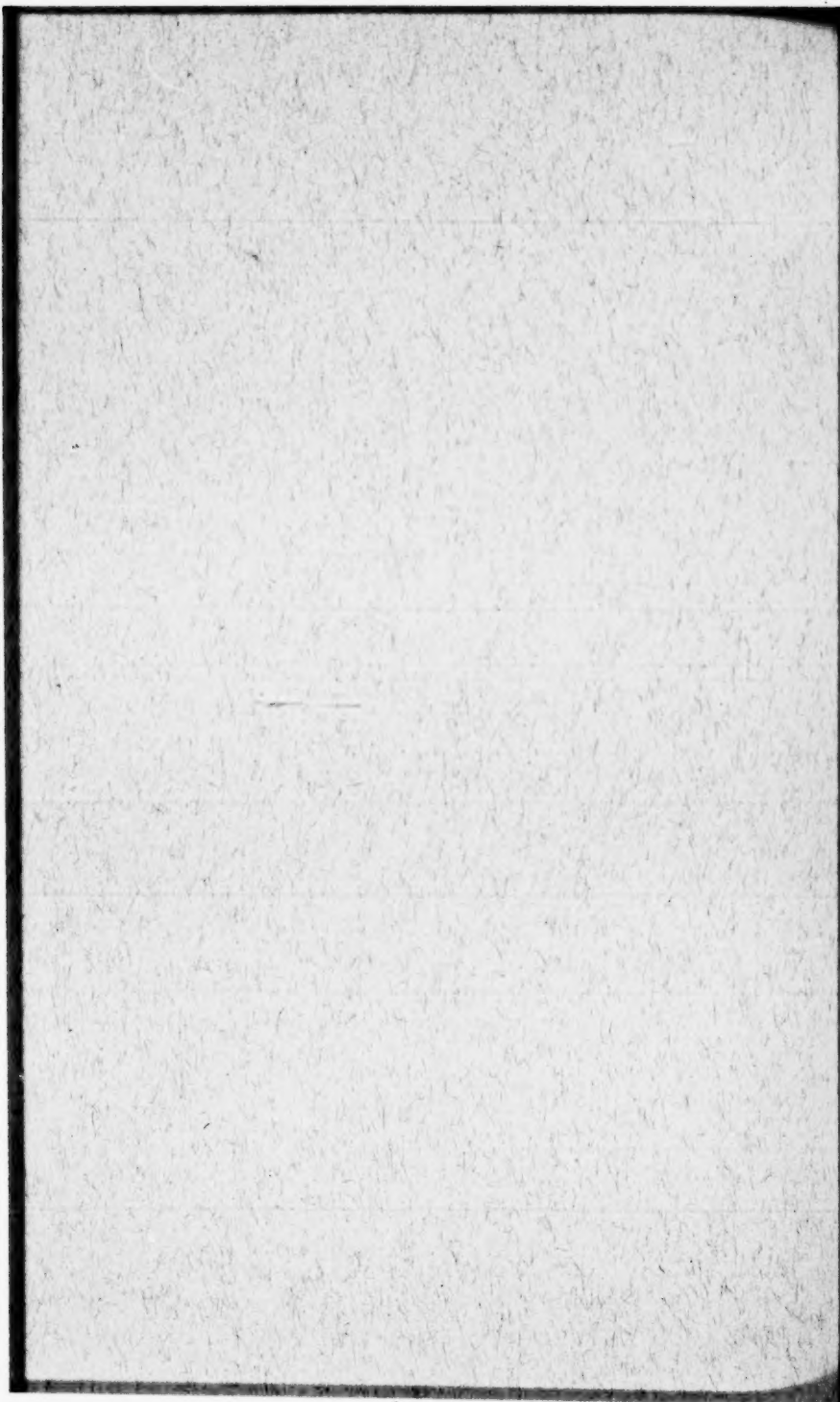
MISSOURI AND ARKANSAS RAILWAY COMPANY *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

W. R. DONHAM

SAM M. WASSELL

Counsel for Petitioner



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*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner, V. W. Petty, prays this Court for the issuance of a writ of certiorari to the Supreme Court of Arkansas, which is the court of last resort in that State, to review a final judgment of said court affirming a judgment of the Circuit Court of Woodruff County, Arkansas, which sustained a demurrer to petitioner's complaint and dismissed petitioner's suit against the respondent.

Your petitioner respectfully shows that the decision of the Supreme Court of Arkansas is probably not in accord with the applicable decisions of this Court, and that it decided a federal question of substance in a way probably not in accord with applicable decisions of this Court.

Summary Statement of the Case

From June, 1925, to December 3, 1935, petitioner was in the employ of respondent railway company as locomotive engineer. On August 3, 1935, the company entered into a collective bargaining agreement with its employees, effective as of August 1, 1935, of which agreement sections (d) and (e), respectively, of Article 32, read as follows:

“(d) Enginemen shall not be discharged, suspended or demerits placed against their records until they have had a fair and impartial hearing before an officer of the Company. At such hearing they may be represented by an employee of their own choice or by the regularly constituted committee of their organization. The representative of the man involved in the hearing shall have the right to introduce witnesses and interrogate any witness giving testimony at the investigation. If found not guilty, he shall be returned to the service and paid for time lost.

“(e) Enginemen shall have the right to appeal from any decision which involves discipline.”

On December 3, 1935, petitioner was summarily discharged from the service of respondent without any hearing. Despite repeated demands by petitioner for such hearing, the same was consistently refused him. On December 3, 1940, petitioner filed suit against respondent in the Circuit Court of Boone County, Arkansas, alleging his discharge in violation of the agreement, and specifically

relying upon sections (d) and (e) of Article 32 thereof, as set forth above. He prayed reinstatement and damages as time lost by reason of said breach. Later, in July, 1941, voluntary nonsuit was taken and, within the month, and within the time allowed by law in which to rebring suit after nonsuit, the same suit was rebrought in the Circuit Court of Woodruff County, Arkansas. Respondent railway company filed a demurrer alleging that (a) the complaint did not state facts sufficient to constitute a cause of action, and (b) if a cause of action was stated by the complaint, the same showed on its face to be barred by the statute of limitations. The trial court sustained the demurrer and, petitioner electing to stand on his complaint and refusing to plead further, judgment was entered dismissing the complaint. On appeal to the Supreme Court of Arkansas, the Railway Labor Act, an Act of Congress, was urged by petitioner as controlling. That court treated the federal question before it and, in refusing to be bound by federal law, stated (referring to the Railway Labor Act):

“This act created the National Railway Adjustment Board, with four Divisions, composed of an equal number of representatives of employers and employees, to adjust and ‘settle all disputes, whether arising out of the application of such agreements (agreements concerning rates of pay, rules and working conditions) or otherwise * * *.’ Subd. 1. While this act does not prescribe an exclusive remedy and appellant was not obliged to present his claim to Division No. 1 of said Board, *Moore v. Illinois Central R. Co.*, 312 U.S. 630, 631, 61 S. Ct. 754, 85 L. Ed. 1089, yet that procedure was open to him. Instead of presenting his claim to that tribunal, he elected to bring his action in this State, where the decision of this court in the Matthews case prevented his recovery. The contract under which he sues was made in 1935

and is conclusively presumed to have been made with reference to the laws of this State in force at the time it was made. As said in *Robards v. Brown*, 40, Ark. 423, 'The laws which are in force at the time when, and the place where, a contract is made and to be performed, enter into and form part of it'."

The *Matthews* case, referred to by the court in its opinion, *supra*, is the case of *St. Louis, I. M. & S. Ry. Co. v. Matthews*, 64 Ark. 398, decided in 1897, and in which an employment agreement, virtually identical with the one here involved, with respect to stipulations against discharge without just cause, or without a hearing, was held to be unilateral and unenforceable, since it required the employer to keep the employee in service indefinitely except for just cause for discharge, but did not impose any like obligation upon the employee to serve.

The Supreme Court of Arkansas, accordingly, refused to hold itself bound by the federal Act and, basing its decision on the rule announced in the *Matthews* case, declared that petitioner's employment contract was unilateral and unenforceable, and affirmed the judgment of the Woodruff Circuit Court.

Statement of Basis of Jurisdiction

The jurisdiction of this Court is invoked under Act of Congress of February 13, 1925, Chapter 229, 43 Statutes 936, Sec. 237B of the Judicial Code, 28 U.S.C. Sec. 344(b), regulating the issue of writs of certiorari to bring up for review judgments of State courts of last resort.

Date of Judgment

The judgment of the Supreme Court of Arkansas, which is probably not in accord with the applicable de-

cisions of this Court, was rendered on February 1, 1943. The opinion of the court is not yet officially reported, but may be found in 167 S.W. (2d) 895. Within the time allowed by law petitioner filed his petition for rehearing, asking that the decision be reconsidered, but, on March 15, 1943, the petition was denied.

Federal Questions Presented

1. Does the Railway Labor Act—an Act of Congress—supersede all prior State court decisions defining the substantive rights acquired under stipulations against wrongful discharge embodied in railroad collective bargaining agreements, where such agreements are made and entered into subsequent to the enactment of, and in substantial conformity with the provisions of, the Federal Act?

2. Do the provisions of the Federal Railway Labor Act, making it the duty of carriers to make and maintain agreements with their employees concerning rules, rates of pay and working conditions, and to provide for prompt and orderly settlement of all grievances and disputes arising thereunder, abrogate, insofar as such agreements are concerned, the common law rule of contracts which holds stipulations against discharge without just cause in indefinite terms employment contracts to be unilateral and unenforceable?

Authorities Believed to Sustain the Jurisdiction

It is believed that the following are some of the cases that sustain the jurisdiction of this Court:

Where state Supreme Court treats federal questions as necessarily involved, decides them against plaintiff in error, and could not otherwise have reached the same re-

sult, it is immaterial how questions were raised, in so far as Supreme Court's jurisdiction to review decision is concerned. *Cissna v. State of Tennessee*, 246 U. S. 289, 38 S. Ct. 306, 62 L. Ed. 720; also see *San Jose Land & Water Co. v. San Jose Ranch Co.*, 189 U.S. 177, 47 L. Ed. 765; *St. Louis, Iron Mountain & Southern Ry. Co. v. Hesterly*, 228 U.S. 702, 57 L. Ed. 1031; *Home Insurance Co., et al v. Dick, et al.*, 281 U.S. 397, 50 S. Ct. 338.

Reasons Relied on for the Allowance of the Writ

A

The decision of the Supreme Court of Arkansas that petitioner's election to bring his action in a State court on a matter in which both federal and state courts have concurrent jurisdiction, and to which a federal Act applies, precludes him from invoking the rights and benefits of the federal Act and that he is bound, instead, by state court decisions on the subject, is in conflict with the applicable decisions of this Court.

B

The decision of the Supreme Court of Arkansas that an agreement concerning rules, rates of pay and working conditions, made by and between respondent railroad company and its employees, as a class, to which class petitioner belonged—was unilateral and unenforceable, has the effect of nullifying the results intended by Congress in enacting the Railway Labor Act, and is in conflict with the applicable decisions of this Court.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the

Supreme Court of Arkansas, commanding that court to certify and send to this Court a full and complete transcript of the record of the proceedings of that court in *Petty v. Missouri and Arkansas Railway Company*, No. 6944, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of the Supreme Court of Arkansas be reversed by this Court, and for such further relief as to the Court may seem proper.

Dated this, the 17th day of May, 1943.

V. W. PETTY,
Petitioner

By W. R. DONHAM
Rector Building, Little Rock, Ark.

SAM M. WASSELL
Counsel
Pyramid Building, Little Rock, Ark.